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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/815,556	03/12/1997	MICHAEL J. SULLIVAN	DLD-2-035-1	5989

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EXAMINER

GRAHAM, MARK S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/03/2003

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GROUP 3700

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 41

Application Number: 08/815,556  
Filing Date: March 12, 1997  
Appellant(s): SULLIVAN, MICHAEL J.

\_\_\_\_\_  
Michelle Bugbee  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/28/03.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

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**(2) *Related Appeals and Interferences***

A statement identifying related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. In addition, Appeal No. 2001-1989 of U.S. Application Serial No. 09/121,628 is directly related to the instant appeal as it contains nearly identical claims and identical rejections.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1-11 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

Claim 12 stands alone.

Claim 13 stands alone.

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,431,193	Nesbitt	2/14/84
5,222,739	Horiuchi	6/29/93
4,884,814	Sullivan	12/5/89

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 9-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt in view of Horiuchi. This rejection is set forth in prior Office action, Paper No. 35.

Claims 6-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt in view of Horiuchi and Sullivan. This rejection is set forth in prior Office action, Paper No. 35.

**(11) Response to Argument**

Appellant's argument "1" which concerns the claim 1 and 13 rejections is addressed first. Just as in Appeal No. 2001-1989, wherein the instant rejection was affirmed by the Board of Appeals, appellant's argument is based on the premise that the teachings of a single cover layer ball, Horiuchi, cannot be combined with a two-cover layer ball as disclosed by Nesbitt. Again, however, the examiner has relied on Horiuchi to teach the benefits of high acid ionomers. Higher stiffness and higher impact

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resilience (resulting in better flying performance) is achieved when using ionomers of 16-30% acid. These are precisely the characteristics called for by Nesbitt for his inner layer (col. 1, lines 57-60). Nesbitt does not explicitly teach any acid level in his inner cover ionomer (although inherently 15% is used). One practicing Nesbitt's invention would select ionomers of high flex modulus (i.e. stiffness) and coefficient of restitution (impact resilience). The recently developed ionomers of 16-30% acid meet this criteria.

It appears appellant is merely "updating" Nesbitt's inventive concept of stiff inner cover (for shot distance) and soft outer cover (for "feel") by replacing the older stiff ionomer with newer stiff ionomer. Only the expected improvements are obtained.

With regard to appellant's argument "2" appellant merely repeats the argument advanced with regard to the Nesbitt/Horiuchi rejection and additionally argues that Sullivan is limited to two layer balls while Nesbitt is directed to three layer balls.

Appellant fails to provide any reasoning why the advantages of Sullivan's hard/soft ionomer blend would not be expected to manifest themselves on a three layer ball such as the Nesbitt ball. Sullivan teaches an outer cover of a hard/soft ionomer blend results in a soft cover that a skilled golfer can impart backspin to (abstract). These are the qualities Nesbitt desires in his outer cover. It should be noted that the identical rejection of claim 12 in Appeal No. 2001-1989 was upheld by the Board of Appeals.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Mark S. Graham  
Primary Examiner  
Art Unit 3711



MSG


October 1, 2003

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